

the selection committee would prefer to offer the Convention only one name, which, of course, it could reject, as it makes clear later on.

In 71B [77] we deal with the procedure, of what happens if the name is rejected. In that case you are referred to 71D, where nominations from the floor would be in order.

There is a provision for a runoff in the event nobody is nominated. If there are more than two names and nobody gets the majority, there would be a second election between the highest two.

Now, on the composition of the selection committee as set forth in 71C [77], subcommittees are to consist of not less than three persons and shall include all remaining delegates of the county or legislative district of the delegate whose death or resignation creates the vacancy. We come to another area where Senator Clark and sponsors of this resolution have a difference with the Committee. The Committee provides here that in the event there are only two delegates remaining, the First Vice President shall become a member of the selection committee. In the event there is only one delegate remaining as a result of death or resignation, then the First Vice President and the Second Vice-President shall be added to the selection committee, and in the event there are no delegates remaining after death or resignation in a county, the First and Second Vice-President shall be the selection committee. Originally, as the committee had proposed it, if there were not enough delegates left to make up a full selection committee, the President would have appointed a delegate from an adjacent county to be a member of the selection committee. Listening to the arguments of Senator Clark, we felt there was merit in the contention that you would be cutting off the people of the area concerned, and we changed it. However, we did not go as far as the Clark resolution; it proposed that the matter then be referred back to the local governing bodies.

Here we had some real problems with that aspect of the Clark resolution. I turn now, if you will be so kind, to the language of the statute which is set forth on the top of page 3, dealing with the manner in which vacancies are filled. In short, if the vacancy had occurred before we convened in our plenary session, Governor Agnew would have had the power to fill the vacancy. However, the statute is perfectly clear, that if the vacancy exists or occurs after the

first meeting of the Convention, the vacancy shall be filled by the Convention.

There is some legislative history that accompanies this provision. In the report of the proposed Enabling Act, which the Constitutional Convention Commission suggested to the Legislature, Section 7 as introduced is not exactly the same in wording as the way it came out; however, except for a few grammatical changes, the language is basically as it came from the Commission with regard to the filling of vacancies once the Convention has assembled. It provides that once the Convention assembles only the Convention, using such procedures as it may prescribe, has power to fill the vacancy. This is in recognition of the fact that once convened, the Convention speaks for the people of the state, is the final judge of the qualifications and election of its members and should be entrusted with the power to fill any vacancy thereafter occurring.

The precedents in other Constitutional Conventions argue in both directions. In the Michigan Convention, the power to fill a vacancy inured to the Governor at all times during the Convention. I believe, if my memory serves me, he did exercise that power on two or three occasions, providing that the persons he designated had the same qualifications as the persons whose places they took. In the New Jersey Convention of 1947, vacancies were filled by an election of the County Board of Freeholders of the county in which the vacancy existed. In the Enabling Legislation for the 1965 New Jersey Convention the vacancies were filled by the political party, our equivalent of the State Central Committee. We considered this approach, but we considered that our election was a non-partisan election, and it seemed singly inappropriate to our committee to permit any political party or the governing body of any political party to be the body that filled the vacancy. In the New York Convention, the recent one, the enabling act under which it was held perhaps furnishes the closest analogy. There the remaining delegates from the legislative districts in which the vacancy occurred had the power to fill the vacancies. However, New York had larger districts than we, and there was no possibility there that fewer than three or four people would have remained to fill the vacancies, so while the New York analogy was helpful and we relied on it in part in the course we have chosen, it did not fit our situation precisely.

Now, I think I can speak for the Committee when I say no matter what alter-